



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201322049

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 04 2013

Uniform Issue List: 408.03-00

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T:EP:RA:T3

Legend:

Taxpayer A = XXXXXXXXXXXXXXXX
Individual B = XXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXX

Amount A = XXXXXXXXXXXXXXXX
Amount B = XXXXXXXXXXXXXXXX
Amount C = XXXXXXXXXXXXXXXX
Amount D = XXXXXXXXXXXXXXXX

Dear xxxxxxxxxxxx:

This is in response to your request, dated July 27, 2011, as supplemented by your correspondence dated September 5, 2012, and October 22, 2012, submitted by your authorized representative on your behalf, in which you requested a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A received a distribution from IRA X totaling Amount A on February 20. Federal income tax was withheld of Amount B. State income tax was withheld totaling Amount C. The net amount of cash distributed to Taxpayer A was Amount D. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to exigencies associated with the final illness and death of her husband, Individual B.

Individual B had been residing in a long term care facility since 2008. Individual B was the beneficiary of a Long Term Care Insurance policy that provided coverage for both adult day care and resident long term care. The coverage lapsed in 2010. Since that time, all expenses for Individual B's long term care were paid from personal funds owned jointly with Taxpayer A.

Taxpayer A represents that, because of her loss of employment in 2010, the continuing care for Individual B represented a severe financial hardship. In order for Individual B to qualify for Medicaid benefits to supplement the loss of his long term care insurance benefits, Taxpayer A was required to "spend down" her personal assets, including the assets in IRA X. In order to do so, Taxpayer A used the money she received from the distribution from IRA X to pay off a mortgage liability.

Taxpayer A represents that, at the time of the distribution from IRA X, she thought that if Individual B died within 60 days of her receipt of the distribution, she would be able to use life insurance proceeds to replenish the IRA. In fact, Individual B passed away on April 20, 2011, which was the 57th day of the 60-day rollover period.

On April 21 and 22, 2011, Taxpayer A was occupied with various tasks related to her husband's death. Specifically, she was: notifying family and friends of the death; making arrangements for the return of medical equipment used in Individual B's care; and publishing Individual B's obituary. It was also necessary for Taxpayer A to arrange for Individual B's cremation and memorial service, which took place on April 25 and 26, 2011, respectively. During this time, and the 60-day rollover period generally, the life insurance proceeds or other funds necessary to make a rollover contribution to IRA X were not available to Taxpayer A.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount D.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to, IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day

after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA, if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001 are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A indicates that the funds distributed from IRA X were used to satisfy a mortgage liability and were not available for rollover during the applicable 60-day rollover period. Therefore, we find that the exigencies associated with the final illness and death of Individual B were not the reason Taxpayer A did not complete a timely rollover under Code section 408(d)(3)(1).

Based on the foregoing, the Service declines to waive the 60-day rollover requirement in accordance with section 408(d)(3)(I) of the Code with respect to the distribution of Amount D from IRA X.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact xxxxxxxxxxxxxx (ID xxxxxxxx) at (xxx) xxx-xxxx. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: xxxxxxxxxxxxxx
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xxxxxxxxxxxxxxxx
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